

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 302 of) CS Docket No. 96-46
the Telecommunications Act of 1996)
)
Open Video Systems)

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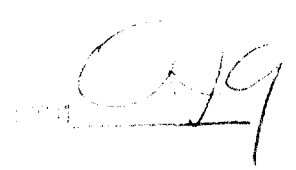
REPLY COMMENTS OF STARSIGHT TELECAST, INC.

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April 11, 1996



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To: The Commission		

REPLY COMMENTS OF STARSIGHT TELECAST, INC.

1. StarSight Telecast, Inc. ("StarSight"), by its counsel, submits these Reply Comments to certain aspects of the opening comments of other parties in this proceeding. StarSight is the developer and marketer of a patented, proprietary, interactive navigational service (also known as an interactive electronic program guide or menu). This service is available to viewers through a variety of arrangements and technologies, among them direct subscription, via the vertical blanking intervals of certain broadcast signals, and by arrangement with the operators of multichannel video delivery systems who offer the StarSight® service independently or as part of a package.

2. Section 302(b)(1)(E)(i) of the Telecommunications Act of 1996 ("Act") directs the Commission to adopt rules prohibiting Open Video System ("OVS") operators from discriminating against unaffiliated video programming providers with regard to program selection material available to viewers. Subsection (iv) of the same section requires Commission rules to prohibit OVS operators from omitting programming services unaffiliated with them from "any navigational device, guide or menu." These directives are

intended to facilitate the overall objectives of the OVS provisions, and of the Act as a whole, to promote fair competition in all aspects of video program provision, and to achieve maximum, unimpeded consumer choice.

3. The StarSight navigational guide embodies these objectives. The StarSight service is all-inclusive and nondiscriminatory: it enables viewers to determine, easily and in detail, virtually all programming that is available to them through whatever method of video delivery (over-the-air, cable, OVS) the viewer relies upon. All programming, regardless of its source or manner of supply to a system operator, is made equally accessible to viewers through StarSight's navigational information. Viewers have the choice of accessing that information in several formats and degrees of detail, including by theme category. Equivalent information, presented uniformly, is provided with respect to all types of programs and program providers.

4. To implement the Act, Commission rules should expressly prohibit the disabling of any of these characteristics by an OVS operator. Operators should also be expressly precluded from impeding consumer receipt of a navigational guide as a whole (such as to favor a guide affiliated with an operator). Navigational guides should be expressly subject to all of the

antidiscrimination protections accorded to the programming itself.^{1/}

5. StarSight fully supports the opening comment argument of Viacom Inc. that OVS operators "should not be allowed to impede ready access to unaffiliated packagers through consumer equipment subscribers have acquired independently. Newly emerging devices, such as the StarSight technology (in which Viacom holds an interest), are coming to offer consumers enhanced navigational control of available video services . . . Whether acquired independently by the consumer or as part of an unaffiliated OVS packager's service offering, such navigational devices should not be rendered useless by the actions of OVS operators. The Commission should, in particular, prevent OVS operators from taking action not otherwise technically necessary . . . that would disable independently-provided navigational devices offering subscribers access to an unaffiliated packager's program offerings." Viacom Opening Comments, p. 19.

6. Similar arguments, also strongly endorsed by StarSight, are made by CBS Inc.: the "plain meaning" of Section [302] (b) (E) (1) "unquestionably encompasses programming guides . . . and the way that such guides . . . present information to subscribers." CBS Inc. Opening Comments, p. 12.

^{1/} For the same policy objectives underlying the Act, and to assure a "level playing field," these prohibitions should also apply to all multichannel video program distributors, not just OVS providers, vis-a-vis navigational guides.

7. To implement the plain meaning of the statute, the Commission must assure explicitly that OVS operators do not impede the availability of navigational guides to consumers, or restrict the content of those guides. Specifically, Commission rules should specify that:

- An operator shall not disrupt or prevent implementation of a consumer's arrangement with providers of equipment not affiliated with the operator to receive a navigational feature or service.
- Each consumer shall be able to use the features that are incorporated into the consumer electronics purchased by that individual, including with respect to navigational guides.^{2/}
- Where a consumer is technologically able to access a navigation service or feature only through the system operator's converter box which he/she leases from the operator, the consumer shall be able to subscribe directly, without impediment, to the marketer of such feature in the event the operator chooses not to provide the marketer's feature.
- Where the consumer has the choice of subscribing to navigational features either through the system operator or through equipment purchased or leased by the consumer from another source, the consumer should have the choice of subscribing to those features either through the system operator, if the marketer of those features has worked out an appropriate arrangement with the operator, or through the marketer directly, if the marketer so chooses, without the operator impeding the latter.

8. These and other provisions need not be elaborate regulation, as feared by Bell Atlantic et al. (Bell Atlantic et al. Opening Comments, p. 26). StarSight urges, for example, that in addition to the more specific provisions recommended in these

^{2/} For example, if a consumer purchases a television set that is StarSight-capable (i.e., has the StarSight electronic program guide built into the receiver), that consumer should be able to call up StarSight and subscribe to and receive the service from StarSight, or from another source authorized by StarSight.

Reply Comments, at a minimum the Commission's OVS rules contain the following simple, straightforward language:

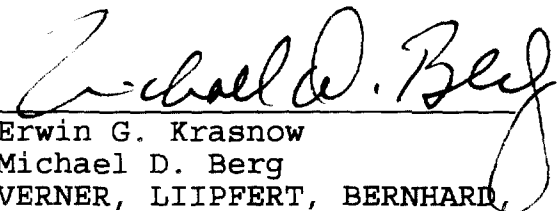
No OVS operator shall disable, render inoperative or impede in any way the receipt by any consumer of any navigational guide, or of any feature, function, capability, content or information offered or provided by such guide.

9. In conclusion, the StarSight navigational service embodies and advances the objectives of Section 302. Commission rules implementing Section 302 should expressly apply to such navigational services, and protect them from activity that impedes universal viewer access to them.

Respectfully submitted,

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Attachment (Certificate of Service)

VLDC01-100562.6

CERTIFICATE OF SERVICE

I, PJ Thiessen, a legal secretary with the law firm of Verner, Liipfert, Bernhard, McPherson & Hand, hereby certify that on this 11th day of April, 1996, I placed in the mail via first class, postage prepaid, copies of the foregoing "Reply Comments of StarSight Telecast, Inc." in CS Docket No. 96-46, to the following:

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